

DEEPWATER PORT MODERNIZATION ACT

JULY 18, 1996.—Committed to the Committee of the Whole House on the State of Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 2940]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 2940) to amend the Deepwater Port Act of 1974, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Deepwater Port Modernization Act”.

SEC. 2. DECLARATIONS OF PURPOSE AND POLICY.

(a) PURPOSES.—The purposes of this Act are to—

- (1) update and improve the Deepwater Port Act of 1974;
- (2) assure that the regulation of deepwater ports is not more burdensome or stringent than necessary in comparison to the regulation of other modes of importing or transporting oil;
- (3) recognize that deepwater ports are generally subject to effective competition from alternative transportation modes and eliminate, for as long as a port remains subject to effective competition, unnecessary Federal regulatory oversight or involvement in the ports’ business and economic decisions; and
- (4) promote innovation, flexibility, and efficiency in the management and operation of deepwater ports by removing or reducing any duplicative, unnecessary, or overly burdensome Federal regulations or license provisions.

(b) POLICY.—Section 2(a) of the Deepwater Port Act of 1974 (33 U.S.C. 1501(a)) is amended—

- (1) by striking “and” at the end of paragraph (3);
- (2) by striking the period at the end of paragraph (4) and inserting a semicolon; and
- (3) by inserting at the end the following:
 - “(5) promote the construction and operation of deepwater ports as a safe and effective means of importing oil into the United States and transporting oil from

the outer continental shelf while minimizing tanker traffic and the risks attendant thereto; and

“(6) promote oil production on the outer continental shelf by affording an economic and safe means of transportation of outer continental shelf oil to the United States mainland.”.

SEC. 3. DEFINITIONS.

(a) ANTITRUST LAWS.—Section 3 of the Deepwater Port Act of 1974 (33 U.S.C. 1502) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraphs (4) through (19) as paragraphs (3) through (18), respectively.

(b) DEEPWATER PORT.—The first sentence of section 3(9) of such Act, as redesignated by subsection (a), is amended by striking “such structures,” and all that follows through “section 23.” and inserting the following: “structures, located beyond the territorial sea and off the coast of the United States and which are used or intended for use as a port or terminal for the transportation, storage, and further handling of oil for transportation to any State, except as otherwise provided in section 23, and for other uses not inconsistent with the purposes of this Act, including transportation of oil from the United States outer continental shelf.”.

SEC. 4. LICENSES.

(a) ELIMINATION OF UTILIZATION RESTRICTIONS.—Section 4(a) of the Deepwater Port Act of 1974 (33 U.S.C. 1503(a)) is amended by striking all that follows the second sentence.

(b) ELIMINATION OF PRECONDITION TO LICENSING.—Section 4(c) of such Act is amended—

(1) by striking paragraph (7); and

(2) by redesignating paragraphs (8), (9), and (10) as paragraphs (7), (8), and (9), respectively.

(c) CONDITIONS PRESCRIBED BY SECRETARY.—Section 4(e)(1) of such Act is amended by striking the first sentence and inserting the following: “In issuing a license for the ownership, construction, and operation of a deepwater port, the Secretary shall prescribe those conditions which the Secretary deems necessary to carry out the provisions and requirements of this Act or which are otherwise required by any Federal department or agency pursuant to the terms of this Act. To the extent practicable, conditions required to carry out the provisions and requirements of this Act shall be addressed in license conditions rather than by regulation and, to the extent practicable, the license shall allow a deepwater port’s operating procedures to be stated in an operations manual approved by the Coast Guard rather than in detailed and specific license conditions or regulations; except that basic standards and conditions shall be addressed in regulations.”.

(d) ELIMINATION OF RESTRICTION RELATING TO APPLICATIONS.—Section 4(e)(2) of such Act is amended by striking “application” and inserting “license”.

(e) FINDINGS REQUIRED FOR TRANSFERS.—Section 4(f) of such Act is amended to read as follows:

“(f) AMENDMENTS, TRANSFERS, AND REINSTATEMENTS.—The Secretary may amend, transfer, or reinstate a license issued under this Act if the Secretary finds that the amendment, transfer, or reinstatement is consistent with the requirements of this Act.”.

SEC. 5. INFORMATIONAL FILINGS.

Section 5(c) of the Deepwater Port Act of 1974 (33 U.S.C. 1504(c)) is amended by adding the following:

“(3) Upon written request of any person subject to this subsection, the Secretary may make a determination in writing to exempt such person from any of the informational filing provisions enumerated in this subsection or the regulations implementing this section if the Secretary determines that such information is not necessary to facilitate the Secretary’s determinations under section 4 of this Act and that such exemption will not limit public review and evaluation of the deepwater port project.”.

SEC. 6. ANTITRUST REVIEW.

Section 7 of the Deepwater Port Act of 1974 (33 U.S.C. 1506) is repealed.

SEC. 7. OPERATION.

(a) AS COMMON CARRIER.—Section 8(a) of the Deepwater Port Act of 1974 (33 U.S.C. 1507(a)) is amended by inserting after “subtitle IV of title 49, United States Code,” the following: “and shall accept, transport, or convey without discrimination all oil delivered to the deepwater port with respect to which its license is issued.”.

(b) CONFORMING AMENDMENT.—Section 8(b) of such Act is amended by striking the first sentence and the first 3 words of the second sentence and inserting the following: “A licensee is not discriminating under this section and”.

SEC. 8. MARINE ENVIRONMENTAL PROTECTION AND NAVIGATIONAL SAFETY.

Section 10(a) of the Deepwater Port Act of 1974 (33 U.S.C. 1509(a)) is amended—

(1) by inserting after “international law” the following: “and the provision of adequate opportunities for public involvement”;

(2) by striking “shall prescribe by regulation and enforce procedures with respect to any deepwater port, including, but not limited to,” and inserting the following: “shall prescribe and enforce procedures, either by regulation (for basic standards and conditions) or by the licensee’s operations manual, with respect to”; and

(3) by redesignating clauses (A), (B), and (C) as clauses (1), (2), and (3), respectively.

PURPOSE AND SUMMARY

The purpose of H.R. 2940, the “Deepwater Port Modernization Act,” is to update and improve the Deepwater Port Act of 1974 (DWPA) and to encourage increased construction and greater use of deepwater ports.

BACKGROUND AND NEED

The DWPA was enacted to promote efficiency in transportation and to protect the environment by establishing procedures for the location, construction, and operation of deepwater ports off the coast of the United States beyond the territorial sea. The legislation was in response to the growing use of supertankers that would have difficulty entering or navigating coastal ports and to environmental and safety concerns about the increased tanker traffic and risk of accidents and spills.

Currently, the Louisiana Offshore Oil Port (LOOP) is the only licensed deepwater port off of the coast of the United States. LOOP also is the nation’s largest oil terminal. The terminal receives, stores and distributes oil brought in by large tankers, primarily from the Persian Gulf. It then distributes the crude oil to refineries throughout the entire Gulf region.

Over the years, LOOP’s owners have sought to make the facility more competitive with other methods of delivering oil to the United States, specifically lightering, which uses small tankers to transport crude oil from larger tankers on the high seas to shore-side terminals. LOOP officials believe that the DWPA has overburdened their deepwater port with certain unnecessary environmental monitoring requirements and overlapping forms of Federal regulation. A representative of the United States Department of Transportation (DOT), accompanied by the United States Coast Guard, testified in general support of the basic thrust, purposes, and provisions of the bill, while expressing some concerns about certain provisions.

The intent of H.R. 2940 is to “modernize” the DWPA to encourage greater use of deepwater ports, particularly for receipt and distribution of oil from the Outer Continental Shelf. With the exception of some limited amendments in the Oil Pollution Act of 1990, Congress has not amended the DWPA since 1984. H.R. 2940 clarifies and streamlines various aspects of the DWPA to improve the competitiveness of current deepwater ports and encourage the licensing and construction of additional deepwater ports. The bill

balances the concerns of the environmental and regulated communities, affected states, and others to provide regulatory reforms with appropriate safeguards to ensure environmental protection and adequate public participation.

DISCUSSION OF COMMITTEE BILL AND SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title: the “Deepwater Port Modernization Act.”

Section 2 provides declarations of purpose and policy, some as free-standing provisions and other as amendments to Section 2 of the DWPA. The overall purpose is to promote greater construction and use of deepwater ports by improving the statutory and regulatory framework under which deepwater ports operate. Provisions clarify, among other things, the desire to streamline governmental regulation so as to address legitimate public concerns, including safety and minimizing risks to the environment, without subjecting deepwater ports to unduly burdensome, unnecessary or duplicative regulations or licensing provisions.

Section 3 amends or repeals definitions in the DWPA to conform with other changes proposed in the bill. Section 3(a) repeals the definition of “antitrust laws,” since section 6 of the bill repeals the provision requiring advance antitrust review generally. Section 3(a) does not affect the general applicability of antitrust laws. Section 3(b) of the bill amends the definition of “deepwater port” to clarify that a deepwater port can engage in any business activity not inconsistent with the DWPA, including the transportation of oil produced on the United States’ outer continental shelf.

Section 4(a) removes existing restrictions upon the use of a deepwater port. As amended, the DPWA would allow a deepwater port to pursue business activities for any purpose not inconsistent with the purposes of the DPWA, including use in connection with exports or transshipments of oil that are not inconsistent with the purposes of the DWPA.

Section 4(b) is a conforming amendment relating to the repeal of the DWPA’s antitrust provisions by section 6.

Section 4(c) modifies the regulatory regime that governs deepwater ports, restructuring the current three-tiered approach of licensing, operations manuals, and regulations into an approach that, to the extent practicable, relies on licenses and operations manuals. However, the provision preserves the use of regulations for basic standards and conditions.

The Committee has found that license conditions under the current statutory framework can be overly burdensome, particularly in the sense of requiring review and approval by the Secretary for relatively routine, noncontroversial matters. The Committee also believes that, while having a nationwide regulatory and enforcement mechanism is essential, often more detailed or facility-specific conditions and requirements implementing the regulations are more appropriate for inclusion in the license or operations manual rather than the more cumbersome regulations. Accordingly, subsection (c) provides that, to the extent practicable, conditions for each facility must be addressed in license conditions rather than by facility-specific regulation and, to the extent practicable, the license must

allow a deepwater port's operating procedures to be stated in an operations manual, as approved by the Coast Guard, rather than in detailed and specific license conditions or regulations, with the proviso that basic standards and conditions must be addressed in regulations.

Provisions in a deepwater port license should address topics including:

1. Ownership of the facility;
2. Liability coverage amounts required for the facility pursuant to the Oil Pollution Act of 1990 and applicable regulations;
3. Maximum and minimum authorized throughput capacity of the facility;
4. Conditions for suspension or termination of the license;
5. A requirement to comply with all laws and regulations that apply to the facility;
6. A requirement to comply with the facility's approved operations manual;
7. Other requirements or conditions deemed necessary by the Secretary to support or maintain the determinations required by the Act.

In addition, the license may address additional matters covered by the regulations. The Committee notes that regulations and a facility's license are not mutually exclusive: the same general subject may be addressed in both places, with differing degrees of detail and site-specificity. The Committee also notes, however, that a basic purpose of the bill is to streamline and improve the current system, which can involve multiple layers of regulations, conditions, and requirements.

The Committee included the exception relating to basic standards and conditions in regulations because of the belief that certain matters are appropriate for national, generally applicable regulations. Regulations should establish standards, including performance and equipment standards, and conditions that must be met through a deepwater port's license or operations manual. The requirement that "basic standards and conditions" be included in regulations is more fully described below in the analysis of section 8 where the term also appears.

H.R. 2940, as introduced, included provisions on the types of environmental monitoring requirements that could be included as license conditions and on the types of fees that could be assessed for environmental monitoring. The Committee deleted such provisions, in part based on concerns about their impact, and in part because of the belief that concerns about environmental monitoring could be resolved administratively and at the state level rather than as amendments to the DWPA. The Committee encourages all parties to work cooperatively to ensure that deepwater ports are subject to reasonable and appropriate environmental monitoring requirements.

Section 4(d) provides that a deepwater port licensee agree, as a condition of license issuance, transfer, or renewal, that there will be no substantial change from the plans, procedures, and safeguards described in the license, as opposed to the original application, without prior approval from the Secretary of Transportation.

Section 4(e) clarifies the findings that must be made by the Secretary of Transportation in connection with the amendment, transfer or reinstatement of a deepwater port license. This amendment does not alter the requirements for public participation that already exist under the Act.

Section 5 amends procedural provisions of the DWPA to authorize the Secretary of Transportation to waive, under certain circumstances, informational filing requirements for applications under the Act. The Committee recognizes that some of the information applicant must submit under the deepwater port application process may no longer be necessary for the Secretary to make specified determinations under the DWPA for purposes of granting a license. Thus, section 5 provides the Secretary with the discretion to exempt an applicant from the submission of such information.

Section 6 repeals certain provisions in the DWPA that impose antitrust review requirements that are in addition to existing antitrust laws and requirements. Nothing in section 6 is intended to impair, amend, broaden or modify any of the existing antitrust laws and requirements outside of the DWPA.

Section 7 clarifies provisions in the DWPA relating to common carrier status and prohibitions against discriminatory acceptance, transport, or conveyance of oil.

Section 8 amends the regulatory structure under which deepwater ports are to operate, including the relationship between regulations and operations manuals.

Amendments to section 10 of the DWPA are intended to facilitate appropriate regulatory reforms, while maintaining adequate and appropriate opportunities for public involvement. Paragraph (1) contains a requirement that the implementation of section 10 of the DWPA include adequate opportunities for public involvement. The committee notes that, in connection with an operations manual, the Secretary has the discretion to determine whether opportunities for public comment are appropriate and what procedures are appropriate. Nothing in the amendment adds a new requirement for the Secretary to provide opportunities for public notice and comment or formal procedures for public involvement based on provisions of the Administrative Procedure Act. Neither this amendment nor amendments to section 4 of the Act modify applicable public participation requirements, including those under the DWPA and the Administrative Procedure Act, for promulgation of regulations or for licenses. In developing or amending provisions in a licensee's operations manual, the Coast Guard must ensure that the public has the opportunity for involvement as appropriate to the potential public impact of such provisions. The Committee does not intend to require that matters within the licensee's operations manual be subjected to public notice and comment or formal procedures under the Administrative Procedure Act if in the Secretary's discretion, public participation regarding a matter in the manual is not appropriate based on its potential public impact, nature and significance.

Paragraph (2), based on testimony from the DOT and comments from the Coast Guard, amends section 10 of the DWPA to provide that the Secretary prescribe and enforce procedures, by regulation (for basic standards and conditions) and by the licensee's operations manual (for more detail and site-specificity). The committee

believes that marine environmental protection and navigational safety matters referred to in section 10 of the DWPA are best addressed by operations manuals (such as for facility-specific items) or by regulation for basic standards and conditions. Nothing in section 8 is intended to prevent the Secretary from exercising authorities related to license conditions in section 4 of the DWPA. Regulations should include generally applicable standards and conditions for the development and approval of detailed plans for the design, construction, and operation of a deepwater port, including:

1. Pollution prevention and response;
2. Fire prevention and response;
3. Personnel safety;
4. Navigation (including generally applicable vessel movement and traffic control provisions);
5. Cargo transfer equipment and procedures;
6. Reporting and recordkeeping requirements.

Opportunities for involvement in the development or amendment of an operations manual are to be afforded to members of the public who are potentially affected by the provisions being developed or amended. Standing committees that provide adequate opportunity for public involvement may effectively serve this purpose. When additional notification is warranted, the Coast Guard Captain of the Port may issue a Local Notice to Mariners and/or require the licensee to advertise in local media, including newspapers, legal notices, Internet, or radio, when the licensee or the Captain of the Port are developing provision that may impact the public. While comment letters are envisioned as the primary means for public input concerning an operations manual, the licensee or Captain of the Port may choose to hold an informal public meeting when the licensee or Captain believes such a meeting is likely to elicit useful information that would not be obtained from written comments.

Provisions in a licensee's operations manual which may affect the public include:

1. Emergency response, management, and notification;
2. Environmental monitoring;
3. Waterways management;
4. Number of moorings or other cargo connections, and other significant features of the cargo handling system;
5. Types of cargoes handled by the facility (particularly when the type of cargo is to be changed).

The Committee notes that these and other subjects addressed in an operations manual may also be covered more generally in regulations and a license, with different levels of detail and site-specificity. These three mechanisms for implementing the Act are not mutually exclusive. However, the Committee also notes that a basic purpose of the bill is to streamline and improve the current system, which can involve multiple layers of regulations, conditions, and requirements.

Paragraph (3) is a technical correction that redesignates paragraphs (A), (B), and (C) of section 10 as clauses (1), (2), and (3).

HEARINGS AND PREVIOUS LEGISLATIVE ACTIVITY

H.R. 2940 was introduced by Congressmen Hayes, Tauzin, Baker of Louisiana, Jefferson and McCrery, on February 5, 1996, and referred to the Committee on Transportation and Infrastructure and, in addition, to the Judiciary Committee (for consideration of anti-trust provisions). Two of the Subcommittees of the Committee on Transportation and Infrastructure share jurisdiction over DWPA: the Subcommittee on Water Resources and Environment and the Subcommittee on Coast Guard and Maritime Transportation. The two Subcommittees held a joint hearing on H.R. 2940 on Thursday, March 28, 1996. The Subcommittees received testimony from various affected interests including members of Congress, officials from DOT and Coast Guard, State and local public and private concerns, and representatives from the environmental community.

COMMITTEE CONSIDERATION

On June 27, 1996, the Committee on Transportation and Infrastructure discharged the Subcommittees on Coast Guard and Maritime Transportation, and Water Resources and Environment from further consideration of H.R. 2940. The Committee then approved, by voice vote, an amendment in the nature of a substitute offered by Chairman Shuster. The amendment retains the original thrust of the bill, and in response to comments from witnesses and affected interests, makes changes to: clarify Congressional policy; delete provisions on environmental monitoring and on State authorities; clarify provisions on the relationship among DOT/Coast Guard regulations, licenses, and operations manuals; and clarify provisions and/or intent on administrative procedure and public involvement.

COMMITTEE OVERSIGHT FINDINGS

Clause 2(l)(3)(A) of rule XI requires each committee report to contain oversight findings and recommendations required pursuant to clause 2(b)(1) of rule X. The Committee has no specific oversight findings.

OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Clause 2(l)(3)(D) of rule XI requires each committee report to contain a summary of the oversight findings and recommendations made by the Government Reform and Oversight Committee pursuant to clause 4(c)(2) of rule X, whenever such findings have been timely submitted. The Committee on Transportation and Infrastructure has received no findings and recommendations from the Committee on Government Reform and Oversight.

COMMITTEE COST ESTIMATE

Clause 2(l)(3)(B) of rule XI requires each committee report that accompanies a measure providing new budget authority, new spending authority, or new credit authority or changing revenues or tax expenditures to contain a cost estimate, as required by section 308(a)(1) of the Congressional Budget Act of 1974, and, when

practicable with respect to estimates of new budget authority, a comparison of the total estimated funding levels for the relevant program (or programs) to the appropriate levels under current law.

Clause 7(a) of rule XIII requires committees to include their own cost estimates in certain committee reports, which include, where practicable, a comparison of the total estimated funding level for the relevant program (or programs) with appropriate levels under current law.

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Clause 2(1)(3)(C) of rule XI requires each committee report to include a cost estimate prepared by the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974, if the cost estimate is timely submitted. The following is the Congressional Budget Office cost estimate:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, July 12, 1996.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2940, the Deepwater Port Modernization Act, as ordered reported by the House Committee on Transportation and Infrastructure on June 27, 1996. We estimate that enacting H.R. 2940 would have no significant impact on the federal budget. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

H.R. 2940 would amend the Deepwater Port Act of 1974 to remove certain restrictions on the use of deepwater ports and to simplify regulatory activities such as licensing, monitoring, and enforcement, all of which are performed by the U.S. Coast Guard. The bill also would allow the Coast Guard to impose operating requirements and environmental safeguards on ports by setting terms and conditions in a facility's permit rather than by conducting formal rulemaking proceedings. We expect that these changes would have a negligible impact on the Coast Guard's operating expenses.

H.R. 2940 contains no intergovernmental or private-sector mandates as defined in Public Law 104-4 and would have no impact on the budgets of state, local, or tribal governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, *Director*).

STATEMENT OF INFLATIONARY IMPACT

Clause 2(1)(4) of rule XI requires each committee report on a bill or joint resolution of a public character to include an analytical

statement describing what impact enactment of the measure would have on prices and costs in the operation of the national economy. The Committee has determined that H.R. 2940 has no inflationary impact on the national economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

DEEPWATER PORT ACT OF 1974

* * * * *

DECLARATION OF POLICY

SEC. 2. (a) It is declared to be the purposes of the Congress in this Act to—

(1) * * *

* * * * *

(3) protect the interests of the United States and those of adjacent coastal States in the location, construction, and operation of deepwater ports; **[and]**

(4) protect the rights and responsibilities of States and communities to regulate growth, determine land use, and otherwise protect the environment in accordance with law**[.]**;

(5) *promote the construction and operation of deepwater ports as a safe and effective means of importing oil into the United States and transporting oil from the outer continental shelf while minimizing tanker traffic and the risks attendant thereto; and*

(6) *promote oil production on the outer continental shelf by affording an economic and safe means of transportation of outer continental shelf oil to the United States mainland.*

* * * * *

DEFINITIONS

SEC. 3. As used in this Act, unless the context otherwise requires, the term—

(1) * * *

* * * * *

[(3)] “antitrust laws” includes the Act of July 2, 1890, as amended, the Act of October 15, 1914, as amended, the Federal Trade Commission Act (15 U.S.C. 41 et seq., and sections 73 and 74 of the Act of August 27, 1894, as amended;**]**

[(4)] (3) “application” means an application submitted under this Act for a license for the ownership, construction, and operation of a deepwater port;

[(5)] (4) “citizen of the United States” means any person who is a United States citizen by law, birth, or naturalization, any State, any agency of a State or a group of States, or any

corporation, partnership, or association organized under the laws of any State which has as its president or other executive officer and as its chairman of the board of directors, or holder of a similar office, a person who is a United States citizen by law, birth or naturalization and which has no more of its directors who are not United States citizens by law, birth or naturalization than constitute a minority of the number required for a quorum necessary to conduct the business of the board;

[(6)] (5) “coastal environment” means the navigable waters (including the lands therein and thereunder) and the adjacent shorelines including waters therein and thereunder). The term includes transitional and intertidal areas, bays, lagoons, salt marshes, estuaries, and beaches; the fish, wildlife and other living resources thereof; and the recreational and scenic values of such lands, waters and resources;

[(7)] (6) “coastal State” means any State of the United States in or bordering on the Atlantic, Pacific, or Arctic Oceans, or the Gulf of Mexico;

[(8)] (7) “construction” means the supervising, inspection, actual building, and all other activities incidental to the building, repairing, or expanding of a deepwater port or any of its components, including, but not limited to, pile driving and bulkheading, and alterations, modifications, or additions to the deepwater port;

[(9)] (8) “control” means the power, directly or indirectly, to determine the policy, business practices, or decisionmaking process of another person, whether by stock or other ownership interest, by representation on a board of directors or similar body, by contract or other agreement with stockholders or others, or otherwise;

[(10)] (9) “deepwater port” means any fixed or floating man-made structures other than a vessel, or any group of [such structures, located beyond the territorial sea and off the coast of the United States and which are used or intended for use as a port or terminal for the loading or unloading and further handling of oil for transportation to any State, except as otherwise provided in section 23.] *structures, located beyond the territorial sea and off the coast of the United States and which are used or intended for use as a port or terminal for the transportation, storage, and further handling of oil for transportation to any State, except as otherwise provided in section 23, and for other uses not inconsistent with the purposes of this Act, including transportation of oil from the United States outer continental shelf.* The term includes all associated components and equipment, including pipelines, pumping stations, service platforms, mooring buoys, and similar appurtenances to the extent they are located seaward of the high water mark. A deepwater port shall be considered a “new source” for purposes of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;

[(11)] (10) “Governor” means the Governor of a State or the person designated by State law to exercise the powers granted to the Governor pursuant to this Act;

[(12)] (11) “licensee” means a citizen of the United States holding a valid license for the ownership, construction, and operation of a deepwater port that was issued, transferred, or renewed pursuant to this Act;

[(13)] (12) “marine environment” includes the coastal environment, waters of the contiguous zone, and waters of the high seas; the fish, wildlife, and other living resources of such waters; and the recreational and scenic values of such waters and resources;

[(14)] (13) “oil” means petroleum, crude oil, and any substance refined from petroleum or crude oil;

[(15)] (14) “person” includes an individual, a public or private corporation, a partnership or other association, or a government entity;

[(16)] (15) “safety zone” means the safety zone established around a deepwater port as determined by the Secretary in accordance with section 10(d) of this Act;

[(17)] (16) “Secretary” means the Secretary of Transportation;

[(18)] (17) “State” includes each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States; and

[(19)] (18) “vessel” means every description of watercraft or other artificial contrivance used as a means of transportation on or through the water.

LICENSE FOR THE OWNERSHIP, CONSTRUCTION, AND OPERATION OF A DEEPWATER PORT

SEC. 4. (a) No person may engage in the ownership, construction, or operation of a deepwater port except in accordance with a license issued pursuant to this Act. No person may transport or otherwise transfer any oil between a deepwater port and the United States unless such port has been so licensed and the license is in force. [A deepwater port, licensed pursuant to the provisions of this Act, may not be utilized—

[(1) for the loading and unloading of commodities or materials (other than oil) transported from the United States, other than materials to be used in the construction, maintenance, or operation of the high seas oil port, to be used as ship supplies, including bunkering for vessels utilizing the high seas oil port,

[(2) for the transshipment of commodities or materials, to the United States, other than oil,

[(3) except in cases where the Secretary otherwise by rule provides, for the transshipment of oil, destined for locations outside the United States,]

* * * * *

(c) The Secretary may issue a license in accordance with the provisions of this Act if—

(1) * * *

* * * * *

[(7) he has received the opinions of the Federal Trade Commission and the Attorney General, pursuant to section 7 of this

Act, as to whether issuance of the license would adversely affect competition, restrain trade, promote monopolization, or otherwise create a situation in contravention of the antitrust laws;]

[(8)] (7) he has consulted with the Secretary of the Army, the Secretary of State, and the Secretary of Defense, to determine their views on the adequacy of the application, and its effect on programs within their respective jurisdictions;

[(9)] (8) the Governor of the adjacent coastal State or States, pursuant to section 9 of this Act, approves, or is presumed to approve, issuance of the license; and

[(10)] (9) the adjacent coastal State to which the deepwater port is to be directly connected by pipeline has developed, or is making, at the time the application is submitted, reasonable progress, as determined in accordance with section 9(c) of this Act, toward developing, an approved coastal zone management program pursuant to the Coastal Zone Management Act of 1972.

* * * * *

(e)(1) [In issuing a license for the ownership, construction, and operation of a deepwater port, the Secretary shall prescribe any conditions which he deems necessary to carry out the provisions of this Act, or which are otherwise required by any Federal department or agency pursuant to the terms of this Act.] *In issuing a license for the ownership, construction, and operation of a deepwater port, the Secretary shall prescribe those conditions which the Secretary deems necessary to carry out the provisions and requirements of this Act or which are otherwise required by any Federal department or agency pursuant to the terms of this Act. To the extent practicable, conditions required to carry out the provisions and requirements of this Act shall be addressed in license conditions rather than by regulation and, to the extent practicable, the license shall allow a deepwater port's operating procedures to be stated in an operations manual approved by the Coast Guard rather than in detailed and specific license conditions or regulations; except that basic standards and conditions shall be addressed in regulations.* On petition of a licensee, the Secretary shall review any condition of license issued under this Act to determine if that condition is uniform, insofar as practicable, with the conditions of other licenses issued under this Act, reasonable, and necessary to meet the objectives of this Act. The Secretary shall amend or rescind any condition that is no longer necessary or otherwise required by any Federal department or agency under this Act.

(2) No license shall be issued, transferred, or renewed under this Act unless the licensee or transferee first agrees in writing that (A) there will be no substantial change from the plans, operational systems, and methods, procedures, and safeguards set forth in his [application] *license*, as approved, without prior approval in writing from the Secretary; and (B) he will comply with any condition the Secretary may prescribe in accordance with the provisions of this Act.

* * * * *

[(f) The Secretary may amend, transfer, or reinstate a license issued under this Act if the amendment, transfer, or reinstatement is consistent with the findings made at the time the license was issued.]

(f) *AMENDMENTS, TRANSFERS, AND REINSTATEMENTS.—The Secretary may amend, transfer, or reinstate a license issued under this Act if the Secretary finds that the amendment, transfer, or reinstatement is consistent with the requirements of this Act.*

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PROCEDURE

SEC. 5. (a) * * *

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(c)(1) * * *

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(3) *Upon written request of any person subject to this subsection, the Secretary may make a determination in writing to exempt such person from any of the informational filing provisions enumerated in this subsection or the regulations implementing this section if the Secretary determines that such information is not necessary to facilitate the Secretary's determinations under section 4 of this Act and that such exemption will not limit public review and evaluation of the deepwater port project.*

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[ANTITRUST REVIEW

[SEC. 7. (a) The Secretary shall not issue any license pursuant to section 4 of this Act unless he has received the opinions of the Attorney General of the United States and the Federal Trade Commission as to whether such action would adversely affect competition, restrain trade, promote monopolization, or otherwise create a situation in contravention of the antitrust laws. The issuance of a license under this Act shall not be admissible in any way as a defense to any civil or criminal action for violation of the antitrust laws of the United States, not shall it in any way modify or abridge any private right of action under such laws.

[(b)(1) The Secretary shall transmit promptly to the Attorney General and the Federal Trade Commission a complete copy of each application for issuance of a license or a petition for the amendment, transfer, or reinstatement of a license that is received. Within 45 days following the last public hearing on license application, the Attorney General and the Federal Trade Commission shall each prepare and submit to the Secretary a report assessing the competitive effects which may result from issuance of the proposed license and the opinions described in subsection (a) of this section. If either the Attorney General or the Federal Trade Commission, or both, fails to file such views within such period, the Secretary shall proceed as if he had received such views.

[(2) Nothing in this section shall be construed to bar the Attorney General or the Federal Trade Commission from challenging

any anti-competitive situation involved in the ownership, construction, or operation of a deepwater port.

[(3) Nothing contained in this section shall impair, amend, broaden, or modify any of the antitrust laws.]

SEC. 8. (a) A deepwater port and a storage facility serviced directly by that deepwater port shall operate as a common carrier under applicable provisions of part I of the Interstate Commerce Act and subtitle IV of title 49, United States Code, *and shall accept, transport, or convey without discrimination all oil delivered to the deepwater port with respect to which its license is issued*, except as provided by subsection (b) of this section.

(b) [A licensee under this Act shall accept, transport, or convey without discrimination all oil delivered to the deepwater port with respect to which its license is issued. However, a licensee] *A licensee is not discriminating under this section and is not subject to common carrier regulations under subsection (a) of this section when that licensee—*

(1) * * *

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MARINE ENVIRONMENTAL PROTECTION AND NAVIGATIONAL SAFETY

SEC. 10. (a) Subject to recognized principles of international law *and the provision of adequate opportunities for public involvement*, the Secretary [shall prescribe by regulation and enforce procedures with respect to any deepwater port, including, but not limited to,] *shall prescribe and enforce procedures, either by regulation (for basic standards and conditions) or by the licensee's operations manual, with respect to rules governing vessel movement, loading and unloading procedures, designation and marking of anchorage areas, maintenance, law enforcement, and the equipment, training, and maintenance required [(A)] (1) to prevent pollution of the marine environment, [(B)] (2) to clean up any pollutants which may be discharged, and [(C)] (3) to otherwise prevent or minimize any adverse impact from the construction and operation of such deepwater port.*

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